

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

JOHN JEFFERY RICHARD,
TDCJ #664664
Petitioner,

V.

DOUGLAS DRETKE,
Respondent.

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C.A. NO. C-04-609

ORDER GRANTING APPLICATION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS AND COLLECTION ORDER

Came on for consideration the Petitioner/Appellant's Application for Leave to Proceed *In Forma Pauperis* on appeal (D.E. 30). Petitioner's *in forma pauperis* data sheet reflects petitioner had a balance, as of October 21, 2005, of \$20.05 in his inmate account. Petitioner's deposits for the past six months totaled \$135.00. His deposits for the three month period prior to October 21, 2005 totaled \$80.00. These figures demonstrate that although petitioner cannot afford to prepay the \$255.00 appellate filing fee, he can pay the fee in installments without undue hardship. While petitioner's appeal is not governed by the Prison Litigation Reform Act, there is no prohibition against collection of the appellate filing fee in installments where an inmate has the ability to do so without undue hardship. Accordingly, the following orders are entered:

1. The Clerk shall file the Appellant's notice of appeal without prepayment of the appellate filing fee.
2. The Appellant is not required to pay an initial partial appellate filing fee.

3. The Appellant shall pay \$255.00, the balance of the full appellate filing fee, in monthly installments to the United States District Court.

4. The Texas Department of Criminal Justice -- Institutional Division shall deduct 20% of each deposit made to the Appellant's inmate trust account and forward payments to the United States District Court on a regular basis provided the account exceeds \$10.00.

5. The Appellant shall execute all consents and other documents required by the agency having custody of the Appellant to authorize the necessary withdrawals from his trust account.

6. The Clerk shall send a copy of this Order to Office of TDCJ Litigation Support, P.O. Box 13084, Austin, TX 78711 and TDCJ Local Funds Division, P.O. Box 629, Huntsville, TX 77342-0629.

NOTICE TO THE APPELLANT:

If you do not wish to pay the appellate filing fee as set forth in this Order, you must notify the Court in writing, by letter or motion, that you do not wish to prosecute the appeal. Your notice must be mailed within 30 days of the date of this Order.

ORDERED this 26th day of October, 2005.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE